



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2022-0870; FRL-9148-01-R3]

#### Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard

#### Second Maintenance Plan for the Richmond-Petersburg Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the "1997 ozone NAAQS") in the Richmond, Virginia Area (Richmond-Petersburg Area). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2022-0870 at [www.regulations.gov](https://www.regulations.gov), or via email to [Gordon.Mike@epa.gov](mailto:Gordon.Mike@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web,

cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

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**SUPPLEMENTARY INFORMATION:** On September 21, 2021, the VADEQ submitted a revision to the Virginia SIP to incorporate a plan for maintaining the 1997 ozone NAAQS in the Richmond-Petersburg Area through December 31, 2028, in accordance with CAA section 175A.

## **I. Background**

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),<sup>1</sup> EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated the Richmond-Petersburg Area as nonattainment for the 1997 ozone NAAQS. The Richmond-Petersburg Area consists of the counties of Charles City,

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<sup>1</sup> In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

Chesterfield, Hanover, Henrico, and Prince George, and the cities of Colonial Heights, Hopewell, Richmond, and Petersburg.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),<sup>2</sup> the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as “maintenance areas.” One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On June 1st, 2007 (72 FR 30485), EPA approved a redesignation request (and maintenance plan) from VADEQ for the Richmond-Petersburg Area for the 1997 ozone NAAQS. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA’s final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (i.e., maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).<sup>3</sup> See 80 FR 12315 (March 6, 2015). However, in *South Coast Air Quality Management District v. EPA*<sup>4</sup> (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit)

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<sup>2</sup> The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

<sup>3</sup> See 80 FR 12315 (March 6, 2015).

<sup>4</sup> 882 F.3d 1138 (D.C. Cir. 2018).

vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for "orphan maintenance areas," (i.e., areas like the Richmond-Petersburg Area) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these "orphan maintenance areas" under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance<sup>5</sup> that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: 1) an attainment emissions inventory; 2) a maintenance demonstration; 3) a commitment for continued air quality monitoring; 4) a process for verification of continued attainment; and 5) a contingency plan. The 1992 Calcagni Memo<sup>6</sup> provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (i.e., attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing "limited maintenance plans" (LMPs)<sup>7</sup> that the requirements of CAA section 175A could be met by demonstrating that the area's design value<sup>8</sup> was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was

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<sup>5</sup> See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994;

<sup>6</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

<sup>7</sup> See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

<sup>8</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on September 21, 2021, VADEQ submitted an LMP for the Richmond-Petersburg Area, following EPA's LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through December 31, 2028, i.e., through the entire 20-year maintenance period.

## **II. Summary of SIP Revision and EPA Analysis**

VADEQ's September 21, 2021 submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in EPA guidance, including the 1992 Calcagni Memo as follows.

### *A. Attainment Emissions Inventory*

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Richmond-Petersburg Area, VADEQ used 2005 for the attainment year inventory, because 2005 was one of the years in the 2003-2005 three-year period when the area first attained the 1997 ozone NAAQS.<sup>9</sup> The Richmond-Petersburg Area continued to monitor attainment of the 1997 ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (i.e., maintenance) of the NAAQS. Thus, VADEQ is using 2014 as representing attainment level emissions for its second maintenance plan. Virginia used 2014 summer day

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<sup>9</sup> For more information, see EPA's April 12, 2007 document proposing to redesignate the Richmond-Petersburg Area to attainment for the 1997 ozone NAAQS, and the associated May 10, 2007 notice correcting table 5 in the proposal (72 FR 18434, 72 FR 26581).

emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1 in this document.<sup>10</sup>

**Table 1. 2014 Typical Summer Day NO<sub>x</sub> and VOC Emissions for the Richmond-Petersburg Area in tons/day**

Area	Source Category	NO <sub>x</sub> Emissions	VOC Emissions
Charles City County	Fire	0.00	0.00
	Nonpoint	0.27	0.37
	Nonroad	0.35	0.91
	Onroad	0.30	0.21
	Point	0.44	0.27
Chesterfield County	Fire	0.01	0.08
	Nonpoint	1.86	9.10
	Nonroad	2.35	2.60
	Onroad	9.66	6.09
	Point	8.44	3.28
Colonial Heights City	Fire	0.00	0.00
	Nonpoint	0.09	0.48
	Nonroad	0.05	0.09
	Onroad	0.80	0.40
	Point	0.00	0.00
Hanover County	Fire	0.01	0.08
	Nonpoint	1.08	3.85
	Nonroad	1.37	2.07
	Onroad	7.19	2.56
	Point	1.96	1.45
Henrico County	Fire	0.00	0.00
	Nonpoint	2.04	8.54
	Nonroad	3.37	1.89
	Onroad	10.61	5.85
	Point	1.26	0.29
Hopewell City	Fire	0.00	0.00
	Nonpoint	0.04	0.52
	Nonroad	0.09	0.16
	Onroad	0.55	0.45
	Point	26.62	2.48
Petersburg City	Fire	<0.01	0.00
	Nonpoint	0.48	1.25
	Nonroad	0.10	0.14
	Onroad	1.54	0.84
	Point	0.17	0.01
Prince George County	Fire	0.03	0.31
	Nonpoint	0.67	1.03
	Nonroad	0.48	1.18
	Onroad	2.75	1.03
	Point	0.14	0.01
Richmond City	Fire	0.00	0.00
	Nonpoint	1.34	6.59
	Nonroad	0.87	1.37
	Onroad	7.09	4.40

<sup>10</sup> For more information, visit [www.epa.gov/sites/production/files/2018-11/ozone\\_1997\\_naaqs\\_emiss\\_inv\\_data\\_nov\\_19\\_2018\\_0.xlsx](http://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx).

Area	Source Category	NO <sub>x</sub> Emissions	VOC Emissions
	Point	4.56	1.27

The data shown in Table 1 in this document is based on the 2014 National Emissions Inventory (NEI) version 2.<sup>11</sup> The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO<sub>x</sub>, and which are required to obtain an operating permit. The point source sector includes large industrial operations that are relatively few in number but have large emissions, such as kraft mills, electrical generating units, and pharmaceutical factories. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The fire emissions sector includes emissions from agricultural burning, prescribed fires, wildfires, and other types of fires. Data are collected for each source at a facility and reported to VADEQ. EPA reviewed the emissions inventory submitted by VADEQ and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

#### *B. Maintenance Demonstration*

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest

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<sup>11</sup> The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

daily average ozone concentration (design value, or “DV”) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA’s November 20, 2018 “Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans” (2018 Resource Document),<sup>12</sup> EPA believes that if the most recent DV for the area is well below the NAAQS (e.g., below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that prevention of significant deterioration requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, VADEQ provided 3-year DVs at monitors located in the Richmond-Petersburg Area from 2001 to 2020. This includes DVs at monitors for 2001-2003, 2002-2004, 2003-2005, 2004-2006, 2005-2007, 2006-2008, 2007-2009, 2008-2010, 2009-2011, 2010-2012, 2011-2013, 2012-2014, 2013-2015, 2014-2016, 2015-2017, 2016-2018, 2017-2019, and 2018-2020, which are shown in Table 2 in this document.<sup>13</sup> In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Richmond-Petersburg Area, as submitted by Virginia and recorded in EPA’s Air Quality System. The most recent DVs (i.e., 2019-2021) at monitors located in the Richmond-Petersburg Area are as follows: Chesterfield County, 0.058 ppm;

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<sup>12</sup> This resource document is included in the docket for this rulemaking available online at [www.regulations.gov](http://www.regulations.gov), Docket ID: EPA-R03-OAR-2022-0870 and is also available at [www.epa.gov/sites/production/files/2018-11/documents/ozone\\_1997\\_naaqs\\_lmp\\_resource\\_document\\_nov\\_20\\_2018.pdf](http://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf).

<sup>13</sup> See also Figure 2 of VADEQ’s September 21, 2021 submittal, included in the docket for this rulemaking available online at [www.regulations.gov](http://www.regulations.gov), Docket ID: EPA-R03-OAR-2022-0870.



Henrico County 0.060 ppm; Hanover County, 0.058 ppm; Charles City, 0.058 ppm.<sup>14</sup>

**Table 2. 1997 Ozone NAAQS Design Values in parts per million for the Richmond-Petersburg Area**

County	AQS Site ID	2001 - 2003	2002 - 2004	2003 - 2005	2004 - 2006	2005 - 2007	2006 - 2008	2007 - 2009	2008 - 2010	2009 - 2011
Chesterfield	51-041-0004	.086	.082	.077	.076	.077	.078	.074	.075	.072
Henrico	51-087-0014	.09	.085	.08	.081	.085	.085	.078	.076	.074
Hanover	51-085-0003	.094	.09	.082	.081	.081	.08	.075	.075	.073
Charles City	51-036-0002	.091	.087	.079	.08	.082	.083	.077	.075	.075

County	AQS Site ID	2010 - 2012	2011 - 2013	2012 - 2014	2013 - 2015	2014 - 2016	2015 - 2017	2016 - 2018	2017 - 2019	2018 - 2020	2019 - 2021
Chesterfield	51-041-0004	.075	.069	.066	.062	.062	.062	.06	.059	.057	.058
Henrico	51-087-0014	.078	.073	.068	.063	.064	.065	.066	.065	.061	.06
Hanover	51-085-0003	.076	.072	.068	.063	.062	.063	.064	.063	.06	.058
Charles City	51-036-0002	.079	.073	.067	.062	.063	.061	.063	.062	.059	.058

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the most recent DV at a monitor located in the area and add the maximum design value increase (over one or more consecutive years) that has been observed in the area over the past several years. For an area with multiple monitors, the highest of the most recent DVs should be

<sup>14</sup> This data is also included in the docket for this rulemaking available online at [www.regulations.gov](http://www.regulations.gov), Docket ID: EPA-R03-OAR-2022-0870 and is also available at [www.epa.gov/air-trends/air-quality-design-values#report](http://www.epa.gov/air-trends/air-quality-design-values#report).

used. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. The largest increase in DVs at a monitor located in the Richmond-Petersburg Area was 0.004 ppm, which occurred between the 2004-2006 (0.081 ppm) and 2005-2007 (0.085 ppm) DVs at the Henrico monitoring site. Adding 0.004 ppm to the highest DV for the 2018-2020 period (0.061 ppm) results in 0.065 ppm, a sum that is still below the 1997 ozone NAAQS.

DVs at all monitors located in the Richmond-Petersburg Area have been below 85% of the 1997 ozone NAAQS (i.e., 0.071 ppm or 71 ppb) since the 2012-2014 period. Additional supporting information that the area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with the development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the highest DV at a monitor located in the Richmond-Petersburg Area is expected to be 0.062 ppm.<sup>15</sup> Therefore, EPA proposes to determine that future violations of the 1997 ozone NAAQS in the Richmond-Petersburg Area are unlikely.

### *C. Continued Air Quality Monitoring and Verification of Continued Attainment*

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the September 21, 2021 submittal, VADEQ commits to continue to operate their air monitoring network in accordance with 40 CFR part 58. VADEQ also commits to track the attainment status of the Richmond-Petersburg Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. EPA has analyzed the commitments in VADEQ's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

### *D. Contingency Plan*

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<sup>15</sup> See U.S. EPA, "Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values", Office of Air Quality Planning and Standards, dated June 2018, available at [www.epa.gov/sites/default/files/2018-06/documents/aq\\_modelingtsd\\_updated\\_2023\\_modeling\\_o3\\_dvs.pdf](http://www.epa.gov/sites/default/files/2018-06/documents/aq_modelingtsd_updated_2023_modeling_o3_dvs.pdf)

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175(A)(d) of the CAA.

VADEQ's September 21, 2021 submittal includes the following contingency plan for the Richmond-Petersburg Area:

Virginia commits to implement all measures with respect to the control of NO<sub>x</sub> and VOC contained in the SIP for the area before redesignation to attainment/maintenance. General conformity requirements and transportation conformity requirements will no longer apply once this maintenance plan expires on December 31, 2028.

Any ozone monitor in the area registering a fourth-highest, eight-hour average of 0.085 ppm or greater is considered to have recorded an exceedance of the 1997 ozone NAAQS. One control measure listed in Table 3 in this document will be implemented in the unlikely event that a monitor registers an exceedance.

Any ozone monitor in the area registering a three-year average of the fourth-highest, eight-hour ozone values of 0.085 ppm or greater is considered to have recorded a violation of the 1997 ozone NAAQS. Two additional control measures listed in Table 3 in this document will be implemented in the unlikely event that a monitor registers a violation.

Two additional control measures listed in Table 3 in this document will be implemented

in the unlikely event that an ozone monitor registers a second violation following the implementation of the first contingency measures.

**Table 3. Contingency Measures for the Richmond-Petersburg Maintenance Area**

Program	Description
Ozone Transport Commission (OTC) Architectural and Industrial (AIM) Coating Model Rule dated October 13, 2014 <sup>16</sup>	Rule provides additional requirements reducing emissions from the AIM source category.
OTC Model Rule for Consumer Products dated May 21, 2013 <sup>17</sup>	Rule provides additional requirements reducing emissions from the Consumer Product source category.
OTC Model Rule for Solvent Degreasing dated 2012 <sup>18</sup>	Rule provides additional requirements reducing emissions from the solvent degreasing category
Article 51 of 9VAC5 Chapter 40, Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations	Application of NO <sub>x</sub> Reasonably Available Control Technology (RACT) on facilities with a potential to emit at least 100 tpy NO <sub>x</sub> .
Article 51 of 9VAC5 Chapter 40, Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations	Application of VOC RACT on facilities with a potential to emit at least 100 tpy VOC.

The following schedule applies to contingency measures should they need to be implemented due to exceedances or violations of the 1997 ozone NAAQS:

- Notification received from EPA that a contingency measure must be implemented or

<sup>16</sup> [otcair.org/upload/Documents/Model%20Rules/AIM\\_Preamble\\_Model\\_Rule.pdf](http://otcair.org/upload/Documents/Model%20Rules/AIM_Preamble_Model_Rule.pdf)

<sup>17</sup> [otcair.org/upload/Documents/Model%20Rules/OTC%20CP%20Model%20Rule%20Final%20Clean%202013%20Revision%20Clean.pdf](http://otcair.org/upload/Documents/Model%20Rules/OTC%20CP%20Model%20Rule%20Final%20Clean%202013%20Revision%20Clean.pdf)

<sup>18</sup> [otcair.org/upload/Documents/Model%20Rules/2011%20OTC%20Model%20Rule%20for%20Solvent%20Degreasing.pdf](http://otcair.org/upload/Documents/Model%20Rules/2011%20OTC%20Model%20Rule%20for%20Solvent%20Degreasing.pdf)

three months after a recorded exceedance or violation is certified.

- Applicable regulation to be adopted 6 months after this date.
- Applicable regulation to be implemented 6 months after adoption.
- Compliance with regulation to be achieved within 12 months of adoption.

EPA proposes to find that the contingency plan included in VADEQ's September 21, 2021 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA also finds that the submittal acknowledges Virginia's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the Richmond-Petersburg Area to attainment.

#### *E. Transportation Conformity*

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as "that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101)."

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas,

certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determination, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and satisfy transportation control measure implementation in the conformity rule provisions (40 CFR 93.113).

Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of transportation plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Richmond-Petersburg Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

### **III. Proposed Action**

EPA's review of VADEQ's September 21, 2021 submittal indicates that it meets all applicable CAA requirements, specifically the requirements of CAA section 175A. EPA is proposing to approve the second maintenance plan for the Richmond-Petersburg Area as a revision to the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a

voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would

not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);



- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule pertaining to Virginia's second maintenance plan for the Richmond-Petersburg Area does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Adam Ortiz,  
Regional Administrator,  
Region III.

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